



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY ATTORNEY RELEASES REPORT DETAILING BREACH OF LEGAL DUTIES BY CITY'S AUDIT COMMITTEE

San Diego, CA: City Attorney Michael Aguirre today released a detailed report outlining his contention that Kroll, Inc., the City's Audit Committee, is in breach of its contract with the City of San Diego. Interim Report No. 8, "*Report on Kroll's Breach of Legal Duties Owed to the City of San Diego*", recommends that the Mayor and City Council terminate the City's multi-million dollar contract with Kroll and seek recovery of damages.

"Kroll and its legal partner Willkie Farr & Gallagher have breached their legal duties to the City of San Diego", said City Attorney Michael Aguirre. "I am recommending to the Mayor and City Council that litigation be initiated to recover financial losses and terminate the existing contract with Kroll."

Fourteen months after the City hired Kroll, a risk management firm, the company has yet to file a report on their findings. Kroll was retained in February, 2005 and tasked with reconciling separate reports by the City Attorney and Vinson & Elkins Law Firm (V&E) regarding the City's pension plan and its disclosure practices. To date the City Council has authorized more than \$20 million in payments to Kroll.

The City Attorney also calls for legal action to be taken against Vinson & Elkins for breach of professional responsibilities and legal duties. Vinson & Elkins has reaped \$6 million in fees from the City for its work.

In this report the City Attorney documents that Kroll and Willkie Farr have:

- Breached contractual and professional duties to the City of San Diego, by failing to perform or performing below the applicable standard of care;
- Failed to complete their work specified deadlines;
- Expanded the scope and cost of their work without Council authorization;
- Violated City billing guidelines by failing to support their billings with proper detailed documentation;
- Failed to act independently;
- In the case of Kroll, engaged in unauthorized lobbying activities; and
- Used undue influence to pressure the City to pay the firms over \$20 million.

(MORE)

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Some of the highlights of the report include e-mail exchanges between Kroll and former City Manager Lamont Ewell that compromise the independence of Kroll's contractual obligations. The Report also cites numerous letters and televised City Council meetings.

In February 2004, the City of San Diego came under investigation by the U.S. Attorney's Office and the U.S. Securities & Exchange Commission because of the failure to disclose of hundreds of millions of dollars in pension debt that had not been properly disclosed to the investment community. The pension deficit which is between \$1.4 million and \$2 billion is a result of a number of financial factors including, but not limited to, the creation of unfunded retirement benefits by the San Diego City Council in 1996 and 2002.

On February 18, 2004, the City retained Houston-based law firm Vinson & Elkins to conduct an internal investigation of the City's financial disclosure practices and identify any misconduct and practices that allowed the disclosure failures to occur. V&E filed a report on September 16, 2004, and found no wrong-doing by any City official. On December 6, 2004, newly elected City Attorney Michael Aguirre announced he would conduct his own internal investigation and filed several reports concluding illegal acts by City officials. reports.

The City Attorney's Interim Report #8, *Report on Kroll's Breach of Legal Duties Owed to the City of San Diego* and exhibits can be found on the City Attorney's web site: www.sandiegocityattorney.org

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